*** THE HON'BLE SRI JUSTICE B.PRAKASH RAO**
AND
*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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+ W.P.No.11364 OF 2006

% Dated 20-09-2005

The State of Andhra Pradesh, rep.,by its Principal Secretary, Transport, Roads & Buildings Department, Govt. of A.P., Secretariat, Hyderabad and another.

…. Petitioners

Vs.

$ Sri G. Ramesh.

…. Respondent

! Counsel for the Petitioners: G.P. for Services II

^ Counsel for the Respondent: Mr. J.R. Manohar Rao

<GIST:

> HEAD NOTE:

? Cases referred

[1] (2004(7) ALT 289 (DB)
2 AIR 1991 SC 1507
3 1962 Supp (3) SCR 713
4 AIR 1966 SC 1313
5 AIR 1970 SC 214
6 2002 Suppl.(2) ALD 687 (DB)
7 AIR 1994 SC 1074

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.11364 of 2006

ORAL ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Heard the learned Govt. Pleader for Services II and Sri J.R. Manohar Rao, learned counsel for the respondent – applicant and at their request the main writ petition itself is taken up for final disposal.

This writ petition is filed by the State of Andhra Pradesh to quash the order of the A.P. Administrative Tribunal in O.A.No.4994 of 2005 dated 28.10.2005.

Facts, in brief, are that the respondent – applicant was initially appointed as a Junior Crafts Instructor on 26.12.1977 at the Industrial Training Institute, Vikarabad. He was later promoted as a Senior Instructor and thereafter selected as an Asst. Motor Vehicles Inspector in the Transport Department of the Government of A.P. He was promoted as a Motor Vehicles Inspector on 18.2.1993. While he was working as a Motor Vehicles Inspector, at Armoor in Nizamabad District, the Anti Corruption Bureau (A.C.B) registered a case against him in Cr.No.3/ACB-NZB/95 under Sections 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988, on the ground that the respondent – applicant was in possession of assets disproportionate to his

known sources of income. This case was registered pursuant to a search conducted at the respondent-applicant's residence, office premises, and at other places. Disciplinary action was initiated and the matter was entrusted, to the Tribunal for Disciplinary Proceedings, vide memo dated 20.5.1997. The Tribunal submitted its report on 20.5.1998 holding that the respondent was in possession of disproportionate assets of Rs.2,79,546/-. A copy of the report was furnished to the respondent, vide proceedings dated 25.6.1998, and he was called upon to submit his representation, if any, on the findings of the Tribunal. The respondent – applicant submitted his representation dated 23.7.1998. The disciplinary authority, after considering the evidence on record including the representation submitted by the respondent – applicant, imposed on him the punishment of dismissal from service, vide G.O.Ms.No.72 dated 7.5.2003. The appeal preferred by the respondent-applicant was rejected, vide Memo dated 29.6.2005.

Aggrieved thereby, the respondent-applicant filed O.A.4994 of 2005 before the A.P. Administrative Tribunal, Hyderabad. The Tribunal, in its order dated 28.10.2005, took note of the fact that the 1st petitioner herein had sought advice of the law Department in respect of the explanation given by the respondent-applicant to the report of the Tribunal for Disciplinary Proceedings. The Tribunal held that, while the competent authority (1st petitioner) had taken a decision to drop the charges against the respondent-applicant, before passing the order, the matter was referred to the Vigilance Commission and the Vigilance Commission had differed with the decision of the competent authority and had advised the Government to dismiss the respondent – applicant from service,

thereupon the 1st petitioner had passed the order dismissing the respondent – applicant from service and that the order of dismissal was issued by the 1st petitioner based solely on the advice of the Vigilance Commission.

The Tribunal called for the records and, on perusal thereof, noticed that the disciplinary authority, on the opinion given by the law department, had decided to drop the charges and thereafter the matter was referred to the Vigilance Commission and the Vigilance Commission, vide letter dated 11.2.2003, had informed that, since G.O.Ms.No.2 dated 4.1.1999, applied to the case of the respondent-applicant, the major penalty of dismissal from service should be imposed. The Tribunal came to the conclusion that the order of punishment of dismissal from service was passed only in view of the letter of the Vigilance Commission dated 11.2.2003. The Tribunal held that G.O.Ms.No.2 dated 4.1.1999 was not applicable since it related to cases of misappropriation, bribery, bigamy, corruption, moral turpitude, forgery and outraging the modesty of women etc., but the case of the applicant related to disproportionate assets. The Tribunal was also of the view that the recommendation of the Vigilance Commission was not proper as it related to a G.O. which did not apply to the facts and circumstances of the respondent - applicant's case and since the impugned order was based on the recommendations of the Vigilance Commission, the disciplinary authority had committed a jurisdictional error in passing the impugned order of punishment. The Tribunal relied on a Division Bench judgment of this Court in **Mubashir Hussain v. Commissioner of Central Excise III, Hyderabad**[1], and after examining the records, held that the

disciplinary authority had not applied its mind independently to the case of the respondent-applicant and it had only acted on the recommendations of the Vigilance Commission. The Tribunal held that the order of punishment was inflicted only at the instance of the Vigilance Commission and such abdication of power by the disciplinary authority could not be countenanced. The Tribunal observed that, while it may be one thing to say that the disciplinary authority had taken into consideration the advice of the Vigilance Commission, while issuing the order of punishment on the basis of the materials placed before it and upon application of its own mind, it was another thing to say that it had abdicated its statutory powers to the Vigilance Commission and had passed the order of punishment, although, in its opinion, no punishment should be imposed on the delinquent officer. The Tribunal held that the instant case was a glaring example where the disciplinary authority had abdicated its powers to the Vigilance Commission and had acted in furtherance of the advice of the Vigilance Commission and, since the independent decision taken by the disciplinary authority was to drop the charges, the disciplinary authority must be held to have committed a jurisdictional error in passing the impugned order.

Learned Government Pleader for Services II would submit that the relief sought for, by the respondent – applicant in the O.A, was to quash the order in G.O.Ms.No.72 dated 7.5.2003 and the consequential memo dated 29.6.2005 as illegal and arbitrary and for a further direction to the petitioners herein to reinstate the respondent – applicant into service forthwith with all consequential benefits such as continuity of service, arrears of salary etc. Learned Government Pleader would submit that the effect of the

order of the Tribunal, consequent upon the O.A. being allowed, was that the petitioners herein were required to reinstate the respondent-applicant into service. Learned Government Pleader would point out that, while the Vigilance Commission may have advised the Government to impose the order of punishment of dismissal from service, the fact remains that the order of punishment, in G.O.Ms.No.72 dated 7.5.2003, makes no reference to the advice of the Vigilance Commission and it must therefore be held that, notwithstanding the advice of the Vigilance Commission, the Government had independently decided to impose the punishment of dismissal from service. Learned Government Pleader would submit that, since the enquiry revealed that the respondent – applicant had acquired disproportionate assets, it was a case involving moral turpitude and the petitioners herein were justified in imposing such a punishment. Learned Government Pleader would contend that, even if it were to be accepted that the 1st petitioner herein had abdicated its statutory duty and had acted on the dictates of the Vigilance Commission, the Administrative Tribunal had erred in directing reinstatement of the respondent – applicant into service, instead of leaving it open to the disciplinary authority to reconsider the matter and pass an order after independent application of mind to the facts and circumstances of the case.

Sri J.R. Manohar Rao, learned counsel for the respondent – applicant, would submit that, since the disciplinary authority had taken a decision to drop the charges against the respondent – applicant, prior to the advice of the Vigilance Commission, the very fact that it had imposed the punishment of dismissal from service, a punishment recommended by the Vigilance

Commission, would reveal non-application of mind on the part of the disciplinary authority and the findings of the Tribunal, based on a perusal and consideration of the material on record, cannot be characterized as perverse or as based on no evidence. Learned counsel would submit that no interference was, therefore, called for, with regards the conclusions arrived at by the Administrative Tribunal.

On a query from the Court as to whether the earlier order of the disciplinary authority, dropping the charges, was communicated to the respondent – applicant, Sri J.R. Manohar Rao, learned counsel for the respondent-applicant, would fairly agree that no such order was communicated. He would, nonetheless, reiterate that even if the order was only passed on file it must still be taken as a decision of the disciplinary authority and when so construed, once the order of punishment of dismissal from service is set aside, as having been passed on the dictates of the Vigilance Commission, nothing further remained to be done except to act in accordance with the earlier decision of the disciplinary authority to drop the charges against the respondent – applicant and to reinstate him into service. Learned counsel would submit that, while dealing with a similar case, wherein the order of punishment was set aside as having been passed on the dictates of the Vigilance Commission, the Division Bench of this Court in **Mubashir Hussain**[1] had not left it open to the disciplinary authority to pass an order afresh.

We see no reason to take a view different from that of the A.P. Administrative Tribunal that the order of punishment of dismissal from service, as passed by the 1st petitioner herein, was

based solely on the advice of the Vigilance Commission and that the impugned order of punishment was liable to be set aside on the ground that the disciplinary authority had failed to act independently and had merely acted on the dictates of the Vigilance Commission.

Suffice to hold that this question is not *res integra*. In **Nagaraj Shivarao Karjagi v. Syndicate Bank**[2], the Apex Court observed:

"….. We are not even remotely impressed by the arguments of counsel for the Bank. Firstly, the Bank itself seems to have felt as alleged by the petitioner and not denied by the Bank in its counter that the compulsory retirement recommended by the Central Vigilance Commission was too harsh and excessive on the petitioner in view of his excellent performance and unblemished antecedent service. The Bank appears to have made two representations; one in 1986 and another in 1987 to the Central Vigilance Commission for taking a lenient view of the matter and to advice lesser punishment to the petitioner. Apparently, those representations were not accepted by the Commission. **The disciplinary authority and the appellate authority therefore have no choice in the matter. They had to impose the punishment of compulsory retirement as advised by the Central Vigilance Commission. The advice was binding on the authorities in view of the said directive of the Ministry of Finance, followed by two circulars issued by the successive Chief Executives of the Bank. The disciplinary and appellate authorities might not have referred to the directive of the Ministry of Finance or the Bank circulars. They might not have stated in their orders that they were bound by the punishment proposed by the Central Vigilance Commission. But it is reasonably foreseeable and needs no elaboration that they could not have ignored the advice of the Commission. They could not have imposed a lesser punishment without the concurrence of the Commission. Indeed. they could have ignored the advice of the Commission and imposed a lesser punishment only at their peril.**

……..The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. **The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the**

appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action,Fourth Edition, p. 309). The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdirtion and plainly contrary to the statutoryRegulations governing disciplinary matters……."

The only question which remains for consideration is as to whether, consequent on the order of punishment being quashed on the ground of non-application of mind, the disciplinary authority should now be given liberty to apply his mind independently to the evidence on record and to take a decision on the nature and extent of punishment to be imposed.

In **Mubashir Hussain**[1] the Division Bench of this Court held that, while the Vigilance Commission had a certain role to play in departmental proceedings, it could not be permitted to usurp the role of the disciplinary authority and that no administrative action was sustainable where the disciplinary authority had acted pursuant to or in furtherance of any advice or direction issued by any other authority who had no role to play under any statute. The Division Bench held that the disciplinary authority, being a statutory authority, must apply its mind to the facts of the matter and arrive at its own conclusions, that the authority is not expected to pass an order at the dictation of the Vigilance Commission nor is the Vigilance Commission expected to issue any direction in this regard. Relying on the earlier judgment of the Apex Court, in **Nagaraj Shivarao Karjagi**[2], the Division Bench in **Mubashir Hussain**[1] held that such abdication of power by the disciplinary authority could not be countenanced. Holding that the disciplinary authority had abdicated its powers in favour of the Vigilance Commission, and had acted pursuant to or in furtherance

of the advice of the Vigilance Commission, the Division Bench held that the disciplinary authority had committed a jurisdictional error in passing the order and that the impugned order could not be sustained. The order of the disciplinary authority was accordingly set aside.

While it is true that the Division Bench, in **Mubashir Hussain[1],** had quashed the order of punishment on the ground that the disciplinary authority had acted at the behest and the dictates of the Vigilance Commission, the question, as to whether the matter should, thereafter, be left open for consideration of the disciplinary authority, permitting him to take a independent decision on the basis of the evidence on record, did not arise for consideration in **Mubashir Hussain[1]**. The contention of Sri J.R. Manohar Rao, learned counsel for the respondent – applicant, that, since no such liberty was granted by the Division Bench in **Mubashir Hussain[1]**, it must be inferred that the disciplinary authority was not permitted to pass an order afresh, cannot be accepted.

It is necessary to note that an order of punishment comes into force only from the date on which it is communicated to the delinquent employee and till a final order is passed the views of the disciplinary authority, prior thereto, are merely tentative.

In **Bachhittar Singh v. State of Punjab**[3], the Supreme Court observed:-

"……The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or

here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh[1], is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. **Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned.** In this connection we may quote the following from the judgment of this Court in the *State of Punjab* v. *Sodhi Sukhdev Singh*(AIR 1961 SC 493)"

> "Mr Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent."

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character….." (emphasis supplied)

In **State of Punjab v. Amar Singh Harika**[4], the Supreme Court held:-

"….THE first question which has been raised before us by Mr. Bishan Narain is that though the respondent came to know about the order of his dismissal for the first time on the 28/05/1951, the said order must be deemed to have taken effect as from the 3/06/1949 when it was actually passed. The High Court has rejected this contention; but Mr. Bishan Narain contends that the view taken by the High Court is erroneous in law. We are not impressed by Mr. Bishan Narains' argument. **It is plain that the mere passing of an**

order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may fell that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him? Would the officer concerned be entitled to his salary for the period between the date when the order was passed and the date when it was communicated to him? These and other complications would inevitably arise if it is held that the order of dismissal takes effect as soon as it is passed, though it may be communicated to the officer concerned several days thereafter. It is true that in the present case, the respondent had been suspended during the material period; but that does not change the position that if the officer concerned is not suspended during the period of enquiry, complications of the kind already indicated would definitely arise. **We are, therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published**. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority……" (emphasis supplied)

Again in **State of Punjab v. Khemi Ram**[5], it was held:-

"……..The question then is whether communicating the order means its actual receipt by the concerned government servant. The order of suspension in question was published in the Gazette though that was after

the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word "communicate" is to impart, confer or transmit information. (Cf. *Shorter Oxford English Dictionary,* Vol. 1, p. 352). As already stated, telegrams, dated July 31, and August 2, 1958, were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from August 2, 1958. It may be that he actually received them in or about the middle of August 1958, after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958 i.e. before August 4, 1958, when he would have retired? **It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it.** In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word "communication" ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in *The State of Punjab* v. *Amar Singh* (AIR 1966 SC 1313) contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid……"

The views expressed by the disciplinary authority, and the

observations made in the course of internal correspondence, prior to the order of punishment in G.O.Ms.No.72 dated 7.5.2003, cannot be considered as a final decision on the action to be taken and the punishment to be imposed. Since no order, to drop the charges, was either finalized or communicated to the respondent-applicant, the observations made by the disciplinary authority in this regard, during the course of internal correspondence, are at best proposals or tentative conclusions and not a final decision.

It is relevant to note that the very same Division Bench, which passed the order in **Mubashir Hussain[1],** had observed, in **D. Ramesh Sinha v. Cadre Authority, Hyderabad**[6], thus:

"….Having regard to the aforementioned notings in the records, we have no doubt whatsoever that the impugned orders of suspension have been passed pursuant to an in furtherance of the direction issued by the State Government. Power to initiate disciplinary proceedings against an employee or place him under suspension emanates from a statute. While exercising such statutory owner, the competent authority, must therefore, apply its mind independently as to whether the conditions precedent for exercising such power exist. It is now trite that if a statutory authority acts at the behest of some other authority, however high he may be, who has no statutory role to play in the matter, then such action/or any order passed by him, would be non est in the eye of law. It is also well settled that while passing an order, if the statutory authority ignores the relevant factors or takes into considerations, factors, not germane for the passing of the order, then such action or the order flowing from such action, would be vitiated in law. Equally well settled is the principle that the statutory authority while exercising statutory powers, must pose correct questions so as to apply correct legal principles and arrive at correct conclusions basing on the actual and exact state of affairs, and if he fails to do so, the same would amount to misdirection in law. Although decisions on this score are galore, suffice it to refer to the decision of the Apex Court in Commissioner of Police v. Gordhandas (AIR 1952 SC 16) and the decision of the Court of Appeal, Civil Division in Secretary of State v. Tameside (1976) 3 ALL ER 665.

In the above view of the matter, we are of the opinion that the impugned orders of suspension cannot be sustained. Hence, the orders of the learned Single Judge dismissing the writ petitions are set aside. Consequently, the orders of suspension dated 10.2.2001,

impugned in the writ petitions, also stand set aside. There cannot, however, be any doubt whatsoever that in the event the statutory authority intends to pass appropriate order afresh upon consideration of the materials on record, it would always be at liberty to do so. There also cannot be any doubt whosoever that before exercising such power, the statutory authority shall take into consideration all the relevant factors and apply its mind independent to the materials placed before it……..” (emphasis supplied)

The submission of the learned Government Pleader, that in **D. Ramesh Sinha**[6], while quashing the order of suspension, the Division Bench of this Court had left it open to the competent authority to pass appropriate orders afresh upon consideration of the material on record, is well founded. Even after the order of punishment of dismissal from service is quashed, on the ground that the disciplinary authority had abdicated his powers and had acted at the dictates of the Vigilance Commission, the competent authority would be entitled to pass appropriate orders afresh after taking into consideration all the relevant facts and circumstances of the case and on applying his mind independently to the material on record.

It is necessary to note that neither this Court, in exercise of its Certiorari jurisdiction under Article 226 of the Constitution of India, nor the Tribunal, would sit in appeal over the decision of the disciplinary authority. The jurisdiction exercised, by the High Court and the Administrative Tribunal, over such decisions is supervisory and not appellate. If the decision making process is found to be in violation of the principles of natural justice, while the order is liable to be quashed, the disciplinary authority cannot be precluded from taking action afresh after compliance of the rules of natural justice and in accordance with the rules. (**Managing**

Director ECIL Vs. Karunakar[7]**).**

While the order of the Tribunal, in quashing the punishment imposed in G.O.Ms.No.72 dated 7.5.2003, is upheld, the order to the extent the O.A. was allowed and, in effect, directing reinstatement of the respondent – applicant is set aside. It is made clear that neither the order passed by us in this writ petition nor the order of the Tribunal will preclude the disciplinary authority from applying its mind independently to the evidence on record and take action against the respondent – applicant in accordance with law.

The writ petition is disposed of accordingly. However, in the circumstances, without costs.

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B.PRAKASH RAO,J

Date: -09-2006

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RAMESH RANGANATHAN,J

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[1] (2004(7) ALT 289 (DB)

[2] AIR 1991 SC 1507

[3] 1962 Supp (3) SCR 713

[4] AIR 1966 SC 1313

[5] AIR 1970 SC 214

[6] 2002 Suppl.(2) ALD 687 (DB)

[7] AIR 1994 SC 1074